

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

CONSUMER ADVOCATE DIVISION)

vs.)

BELLSOUTH TELECOMMUNICATIONS,)
INC.)

100 FEB 14 PM 2 13
Docket No. _____
ERIS/STW/ALM/AMW
Tariff 00-00041

COMPLAINT, OR ALTERNATIVELY, PETITION TO INTERVENE AND PETITION FOR
STAY

Complainant and Petitioner, Consumer Advocate Division of the Office of the Attorney General respectfully seeks an evidentiary hearing and injunctive relief and would respectfully show:

I

1. That the complainant, Consumer Advocate Division of the Office of the Attorney General ("CAD"), 425 5th Avenue North, 2nd Floor Cordell Hull Building, Nashville, Tennessee, 37243, represents the interest of Tennessee consumers pursuant to Tenn. Code Ann. §§ 65-4-118 and 65-5-210 (b).

2. That defendant, BellSouth Telecommunications, Inc. (BellSouth), 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201-3300 is a publicly held utility and is subject to the jurisdiction of the Tennessee Regulatory Authority ("Authority") pursuant to Tenn. Code Ann. § 65-4-101. Counsel for BellSouth is Guy Hicks, Esq.

II

3. That on or about June 20, 1995 BellSouth applied for a price regulation plan in accordance with Tenn. Code Ann. § 65-5-209.

4. That Tenn. Code Ann. § 65-5-208 (a) provides in pertinent part:

POSTED
3-15-2000

Classification of services - Exempt services - Price floor - Maximum rates for non-basic services.

(a) Services of incumbent local exchange telephone companies **who apply** for price regulation under § 65-5-209 are classified as follows:

(1) "Basic local exchange telephone services" are telecommunications services which are comprised of an access line, dial tone, touch-tone and usage provided to the premises for the provision of two-way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on June 6, 1995, or other services required by state or federal statute. These services shall, at a minimum, be provided at the same level of quality as is being provided on June 6, 1995. **Rates for these services shall include both recurring and nonrecurring charges.**

5. That the legislative intent of Tenn. Code Ann. § 65-5-209 (f) is to prevent a price regulation plan company from increasing or adding to recurring or nonrecurring charges associated with local basic exchange service.

6. That BellSouth's basic local exchange rates in effect on June 6, 1995 incorporated working capital and lead lag rate adjustments to compensate the company for recurring and non-recurring late payments and uncollectible as stated in the attached affidavit of Robert T. Buckner.

7. That rates do not exist in isolation. They have meaning only when one knows the services to which they are attached. AT&T v. Central Office Telephone, 524 U.S. 214, 118 S.Ct. 1956, 1963, 141 L.Ed2d 222 (1998).

8. That local basic exchange service as defined by Tenn. Code Ann. § 65-5-208 (a)(1) include recurring and nonrecurring charges associated with the provision of the service and further that recurring and nonrecurring charges arising from late payments of bills for local basic exchange service are recurring or nonrecurring charges.

9. That the TRA on December 9, 1998 entered an order creating a retroactive effective date for BellSouth of October 1, 1995 and an initial rates date of December 1, 1998 based on BellSouth's rates in effect on June 6, 1995. (That the Consumer Advocate Division has appealed the decision and does not waive any arguments in making its allegations herein.)

10. That the TRA and BellSouth assert that BellSouth's initial rates under Tenn. Code Ann. § 65-5-209 began on December 1, 1998.

11. That if BellSouth's initial rates began on December 1, 1998, the TRA does not have jurisdiction to increase any Tenn. Code Ann. § 65-5-208 (a)(1) local basic exchange service rates or charges which could be included under Tenn. Code Ann. § 65-5-208 (a) (1) and that BellSouth does not have authority to increase said rates because Tenn. Code Ann. § 65-5-209(f) effectively freezes said rates for four years. Tenn. Code Ann. § 65-5-209 (f) provides:

Notwithstanding the annual adjustments permitted in subsection (e), the initial basic local exchange telephone service rates of an incumbent local exchange telephone company subject to price regulation shall not increase for a period of four (4) years from the date the incumbent local exchange telephone company becomes subject to such regulation. At the expiration of the four-year period, an incumbent local exchange telephone company is permitted to adjust annually its rates for basic local exchange telephone services in accordance with the method set forth in subsection (e) provided that in no event shall the rate for residential basic local exchange telephone service be increased in any one (1) year by more than the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation.

12. That BellSouth, on January 21, 2000, filed tariff number 00-00041 to implement a 3% "late payment charge" for all services including local basic exchange service and seeks an effective date of February 22, 2000 and that said tariff unlawfully seeks to add additional recurring or non recurring late payment charges to the compensation it is already receiving and which were

in effect on June 6, 1995 and on December 1, 1998.

13. That BellSouth, on January 21, 2000, filed tariff number 00-00041 to implement a 3% "late payment charge" for all services including local basic exchange service and seeks an effective date of February 22, 2000 and that said tariff unlawfully seeks to add additional recurring or non recurring late payment charges to the compensation it is already receiving and which were in effect on June 6, 1995 and on December 1, 1998 and that said tariff is neither just or reasonable, and further BellSouth has not demonstrated that it is not already being justly compensated for late payments and it does not identify the amount of revenue which will need to be offset or its "previous reductions to services."

14. That BellSouth, on January 21, 2000, filed tariff number 00-00041 to implement a 3% "late payment charge" for all services including local basic exchange service and seeks an effective date of February 22, 2000 and that said tariff unlawfully seeks to add additional recurring or non recurring late payment charges to the compensation it is already receiving and which were in effect on June 6, 1995 and on December 1, 1998 and that said tariff is unjustly discriminatory because it reduces rates for business customers but does not reduce rates for residential customers.

15. That 'discrimination in charges' includes non-price features, and that BellSouth can not defeat the broad purpose of Tenn. Code Ann. § 65-4-122 by the simple expedient of providing or withholding a benefit.

16. That discriminatory "privileges" come in many guises, and are not limited to discounted rates and that a preference or rebate is the necessary result of every violation where BellSouth renders, or pays, for a service for one customer but not another and that BellSouth plans to convey discriminatory privileges upon business customers at the expense of residential customers.

17. That not paying a late charge, or not paying an additional late charge is a privilege

is a privilege and that this proceeding will affect the rights, duties and privileges of Tennessee consumers and BellSouth.

18. That the late charge proposed in the tariff is more than just and reasonable and is both a penalty prohibited by Tenn. Code Ann. § 65-4-122 (b) and a double payment to BellSouth of the premium already included in its rates for late charges, and that BellSouth is estopped from alleging that those premiums for late charges are unjust or unreasonable on December 1, 1998 and that BellSouth has not shown that those premiums are unjust and unreasonable in this filing.

19. That the proposed late charge is unreasonable and even if not unreasonable still discriminatory.

20. That BellSouth should be estopped from alleging that working capital and lead/lag was considered in its current local basic exchange service rates to cover the lag between the provision of service and the collection of revenues.

21. That BellSouth should be estopped from alleging that working capital and lead/lag was considered in its current local basic exchange service rates to cover the lag between the provision of service and the collection of revenues and that rates were calculated to compensate the company for late payments and bad debts.

22. That BellSouth should be estopped from alleging that the rates for local basic exchange service are not related to services covered by those rates.

23. That BellSouth should be estopped from alleging that the recurring and norecurring charges for local basic exchange service will not be increased by its proposed tariff.

24. That BellSouth has failed to show the amount and source of any alleged subsidy to local basic exchange service from other rates and further that BellSouth has not shown that it has adequately reduced rates to compensate for the price increase.

25. That local basic exchange service rates contain a recurring charge for late payments and bad debt and tariff 00-00041 is an increase in the recurring or nonrecurring charge.

26. That late charge tariff 00-00041 on its face increases recurring or nonrecurring charges.

27. That consumers and localities are irreparably harmed by the unjust discrimination, the penalty and the more than just and reasonable rates proposed in tariff 00-00041.

28. That Tenn. Code Ann. § 65-4-122 provides:

(c) It is unlawful for any such corporation to make or give an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any undue or unreasonable prejudice or disadvantage.

See also, Tenn. Code Ann. §§ 65-4-122 and 65-5-204.

29. That Tenn. Code Ann. § § 65-4-122 and 65-5-204 provide rules of construction for the determination of unlawful discrimination and unreasonable preferences under Title 65.

30. That BellSouth tariff 00-00041 makes service price differences with respect to local basic exchange services and other services under its tariff.

31. That BellSouth tariff 00-00041 makes price differences which are not based not on cost differences.

32. That BellSouth tariff 00-00041 is contrary to public policy.

33. That approving BellSouth tariff 00-00041 is contrary to this agency's duty to protect consumers as provided by Tenn. Code Ann. § 65-4-123 which provides in pertinent part:

Declaration of telecommunications services policy.

The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting

alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, **the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers** without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable.

34. That BellSouth has not shown any unreasonable prejudice which should result in an unjust and unreasonable late charge tariff.

35. That the TRA should find that the proceeding involving tariff 00-00041 is a contested case proceeding within the definition provided by Tenn. Code Ann. § 65-2-101 (2) and should hear this case in accordance with Tenn. Code Ann. § 65-5-210 (a)(1).

36. That Tenn. Code Ann. § 65-3-105 empowers the TRA to enjoin and stay the BellSouth tariff and said tariff should be enjoined or stayed.

Wherefore the Consumer Advocate Division prays that the Tennessee Regulatory Authority find that the proceeding involving tariff 00-00041 is a contested case proceeding within the definition provided by Tenn. Code Ann. § 65-2-101 (2).

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that price discrimination is the practice of selling the same product at two or more prices where the price differences do not reflect cost differences and that tariff 00-00041 unjustly discriminates and that consumers who must pay the late charge while others do not are discriminated against.

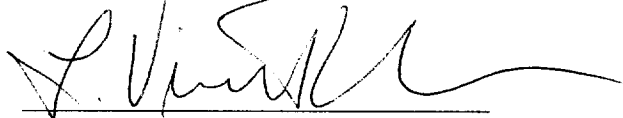
The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find that provision for late payments and bad debts were considered and included in BellSouth's basic local exchange service rates on June 6, 1995 and December 1, 1998.

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority find

that tariff 00-00041 is contrary to public policy, including but not limited to Tenn. Code Ann. § 65-5-208 (a)(1), and creates privileges and rates which are prohibited by Tenn. Code Ann. §§ 65-4-122 (a)(b)(c).

The Consumer Advocate Division further prays that the Tennessee Regulatory Authority enjoin tariff 00-00041, find that it is not cost justified and grant other relief as is just.

Respectfully Submitted,

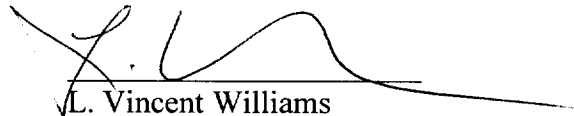


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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been mailed postage prepaid to the parties listed below this 19th day of February 2000.

Guy Hicks, Esq.
BellSouth Communications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300



L. Vincent Williams

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: PETITION OF BELL SOUTH TO)
IMPLEMENT NEW AND INCREASE)
EXISTING LATE PAYMENT) DOCKET NO. 00-00041
CHARGES)
)

AFFIDAVIT

Comes the Affiant, R. Terry Buckner, after being duly sworn who deposes and says:

1. That I am a Certified Public Accountant and Senior Regulatory Analyst of the Consumer Advocate Division Staff ("CA") in the office of the Attorney General and Reporter for the State of Tennessee.
2. That the BellSouth rate filing does not address the fact that the customer or end-user has already considered the timeliness of payments and their related bad debt expense in BellSouth's current rates.
3. That at the last rate proceeding for BellSouth before the Tennessee Public Service Commission ("TPSC"), return on the investment in Working Capital required to fund the operations during the lag between provision of service and collection of revenues was included in the cost of service on which current rates are based.
4. That at the last rate proceeding for BellSouth before the TPSC, the cost of service on which current rates are based included bad debt expense reflecting BellSouth's actual collection experience and that those rates were in existence on June 6, 1995 and December 1, 1998.
5. That the imposition of a late payment charge without a corresponding reduction will result in BellSouth's double recovering of costs. BellSouth will recover once through rates and again through the application of the penalty.

Further the Affiant sayeth not.

R. Terry Buckner

R. Terry Buckner

Subscribed and sworn before me this the 14th day of February, 192000.

Teresa A. Harris

Notary Public

My commission expires on the 25th day of January, 192003.